

# Order

Michigan Supreme Court  
Lansing, Michigan

October 27, 2021

Bridget M. McCormack,  
Chief Justice

161835

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

THERESA MARIE GAFKEN,  
Defendant-Appellant.

SC: 161835  
COA: 345954  
St Clair CC: 18-001241-FC

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh  
Elizabeth M. Welch,  
Justices

By order of March 24, 2021, the prosecuting attorney was directed to answer the application for leave to appeal the June 18, 2020 judgment of the Court of Appeals. On order of the Court, the answer having been received, the application for leave to appeal is again considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1).

We further ORDER the St. Clair Circuit Court, in accordance with Administrative Order 2003-03, to determine whether the defendant is indigent and, if so, to appoint counsel to represent the defendant in this Court.

The appellant shall file a supplemental brief within 42 days of the date of the order appointing counsel or by January 31, 2022, whichever is later, addressing: (1) whether the trial court erred in excluding evidence that the defendant was threatened and of the defendant's mental state at the time of the offense; (2) whether the trial court erred in its instruction to the jury as to the intent element of second-degree murder; and (3) whether any error was harmless. In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellee shall file a supplemental brief within 21 days of being served with the appellant's brief. A reply, if any, must be filed by the appellant within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.

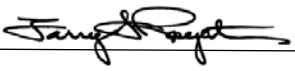
The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 27, 2021

  
Clerk